

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

Patent Application

Inventors: John Graeme Houston et al.

Serial No.: 10/535600

Conf. No.: 7535

Filing Date: 05/19/2005

Art Unit: 3754

Examiner: James F. Hook

Docket No.: 9931-008US

Title: Helical formation for a conduit

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REPLY BRIEF UNDER 37 CFR 41.41

Pursuant to 37 CFR 41.41, this brief is filed in support of the appeal in this application.

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ARGUMENT

The reasons as to why the evidence, in the form of an affidavit and which addresses both the Kuhlmann and Tayside references, was not presented before the filing of the appeal brief, are reiterated here.

In the Office action mailed on September 6, 2006, none of the pending claims related to "A method of imparting spiral flow on blood passing through blood flow tubing [...]" as recited in claim 16 of the claims in the appeal brief. As such, there was no counterpart to the Examiner's ground of rejection of claim 16.

In the Office action mailed on June 6, 2007, there was, again, no pending claim that related to "A method of imparting spiral flow on blood passing through blood flow tubing [...]" . Therefore, again, there was no ground of rejection which corresponded to that being raised by the Examiner against pending claim 16 as currently pending.

With respect to the Office action dated October 17, 2007, claim 16 substantially in the form in which it is currently pending, was under examination. In this Office action, the Examiner raised the rejection of obviousness with respect to a combination of Tayside in view of Kuhlmann. However, the Examiner acknowledged that this was a new ground of rejection (see the section headed "Response to Arguments").

The applicants submitted a reply to the Office action of October 17, 2007 which explained why it would not have been obvious to combine Tayside and Kuhlmann. In response to our arguments, the Examiner issued the Office action of July 24, 2008 in which it was stated (see the section "Response to Arguments") that "these are likewise not persuasive when [...] such arguments are not provided with any evidence or proof that the underlying statements are true [...] or other evidence suggesting one skilled in the art would expect any of these conditions to occur."

This was, therefore, the first occasion on which the Examiner had requested such evidence, and, therefore, it is only proper that the next substantive action was to submit such evidence.

CONCLUSION

The applicants have demonstrated that the logic underlying the Office's rejection is untenable, and, therefore, that the rejection is not sustainable. For this reason, the applicants respectfully request the Board of Appeals to reverse the decision of the Examiner as provided for in 37 C.F.R. 41.50(a).

Respectfully,
John Graeme Houston et al.

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